Penn Color, Inc. *and* Teamsters Union Local No. 115. Case 4-CA-10315

April 28, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND HUNTER

On June 4, 1981, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in opposition thereto.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge, as modified herein, and to adopt his recommended Order,[3] as modified herein.[4]

1. The Administrative Law Judge concluded that Respondent violated Section 8(a)(1) of the Act by attempting to induce employees to sign an antiunion petition and by promising improvements in benefits and better pay as a reward for discontinuing union activities. In so doing, he relied on his finding that Steven Prebish, who he found was a supervisor within the meaning of the Act, requested employee Schock to sign an antiunion petition and stated to Schock that when the "trouble" was over the employees would receive improved benefits and better pay. While we agree with the Administrative Law Judge's conclusion, we do so only for the following reasons.

Employee Schock, whom the Administrative Law Judge credited, testified that about a week after union activity began he had a conversation with Prebish, whose supervisory status is in dispute, and Wendig, an admitted supervisor. According to Schock, Prebish asked him, "Would you like to sign a petition to get the [U]nion out?" When Schock replied that if he signed the petition, the employees who started the Union would be fired, Prebish continued, "No, that's not the way it's going to work. We'll get everybody to sign the petition and we'll get Mr. Putnam to sign a thing that says you won't be fired and it will work out for all of us, all of the trouble will be over with, and plus we'll get better benefits and better pay and everything." Schock testified further that Wendig then

[1] Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because an administrative law judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B.* v. *Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In the section of his Decision entitled "Majority Status," the Administrative Law Judge erroneously stated that 38, rather than 39, authorization cards were received into evidence; that 1 of these cards was signed by alleged Supervisor Steven Prebish, rather than by employee David Prebish; that 25, rather than 27, of these cards were dated June 7, 1979; and that 33, rather than 34, employees had signed cards by June 14, 1979. He also referred to employee Freudenberger as "Freudenmerger." In the section of his Decision entitled "Violations of Section 8(a)(1)," the Administrative Law Judge stated that employee King testified that Day-Shift Foreman Horst talked to him regarding an antiunion petition being circulated by Steven Prebish, rather than that Horst talked to employee James Coons in the presence of King. These inadvertent errors are insufficient to affect our decision.

In adopting the Administrative Law Judge's finding that a majority of employees in the appropriate bargaining unit signed valid authorization cards, we find it unnecessary to pass on the validity of the authorization card signed by employee Snyder.

The Administrative Law Judge referred, without citation, to the Board's Decision in the representation proceeding involving these parties. That Decision appears at 249 NLRB 1117 (1980).

[2] The Administrative Law Judge concluded that Respondent violated Sec. 8(a)(1) of the Act on June 8, 1979, by interrogating employees King and Smith and by implicitly promising King a promotion if he refrained from further union activities. Respondent has excepted to these conclusions on the ground, *inter alia*, that the complaint alleged only one instance of interrogation on June 8 and did not allege any promise of promotion in exchange for refraining from union activities. We find this exception without merit. Although the complaint did not specifically allege all these violations, the issues were fully litigated at the hearing and the record fully supports the Administrative Law Judge's conclusions. Accordingly, we adopt the Administrative Law Judge's conclusions that this conduct violated Sec. 8(a)(1). *Gerald G. Gogin d/b/a Gogin Trucking*, 229 NLRB 529, fn. 2 (1977).

In adopting the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) of the Act by soliciting grievances from employees, we find it unnecessary to rely on *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975), which did not involve such an issue.

[3] The Administrative Law Judge recommended a broad cease-and-desist order. We have considered this case in light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), and have concluded that a broad order is appropriate.

[4] We agree with the Administrative Law Judge's recommendation that Respondent be ordered to reinstate employee Moore with backpay. In so doing, we reject Respondent's contention that Moore is not entitled to reinstatement or backpay because, shortly after his termination, he stated to Day-Shift Foreman Horst that "Dead men tell no tales." Moore's statement, made in the heat of discharge and unaccompanied by any threatening gestures, was ambiguous and at worst nothing more than a rough remark by an employee under the stress of an unlawful discharge. Accordingly, we find that Moore's remark is an insufficient basis for denying him his right to reinstatement with backpay. See *Asplundh Tree Expert Company*, 220 NLRB 352, fn. 2 (1975). However, we shall modify the Administrative Law Judge's recommended reinstatement order to conform to our usual order in such cases, and modify his recommended make-whole order to provide for the method of computing backpay and interest. We shall also modify the Administrative Law Judge's recommended Order so as to require Respondent to expunge from employee Moore's personnel records, or other files, any reference to his June 8, 1979, discharge.

Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

asked him, "What seems to be your problem? What do you want, better benefits, better insurance . . . better wages or better working conditions, what?"

Contrary to the Administrative Law Judge's finding, there is no evidence that Prebish was a supervisor. Accordingly, a finding that Respondent violated Section 8(a)(1) cannot be based on Prebish's remarks alone. However, Prebish made his statements to Schock in the presence of admitted Supervisor Wendig, who then made his own inquiry as to what Schock's "problem" was and what improved benefits Schock wanted. In these circumstances, we find Wendig's remarks clearly constituted an attempt to persuade Schock to accede to Prebish's request and amounted to ratification of Prebish's remarks. Accordingly, we conclude that Respondent thereby sought to induce Schock to sign an antiunion petition and promised improvements in benefits and better pay as a reward for discontinuing union activity, and that Respondent thereby violated Section 8(a)(1) of the Act. See *Intertherm, Inc.*, 235 NLRB 693 (1978).

2. We adopt the Administrative Law Judge's findings that Respondent violated Section 8(a)(1) of the Act by (1) threatening to relocate its plant because of the employees' union activities, (2) interrogating employees as to how many employees had signed union authorization cards, (3) threatening to discharge employees in retaliation for their prounion activities, (4) promising promotions to employees to induce abandonment of union activities, (5) threatening to utilize mistakes in work performance as a pretext to discharge prounion employees, (6) attempting to induce employees to sign antiunion petitions, (7) promising improvements in benefits and better pay as a reward for discontinuance of union activities, (8) soliciting employee grievances to induce abandonment of prounion activities, and (9) granting substantial increases in insurance benefits to restrain and coerce its employees in their prounion activities. We additionally adopt the Administrative Law Judge's findings that Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Moore. Finally, for the reasons set forth below, we adopt the Administrative Law Judge's conclusion that a bargaining order is warranted in this case.

In *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), the Supreme Court approved our use of bargaining orders as remedies in cases marked by substantial employer misconduct which has the "tendency to undermine [the Union's] majority strength and impede the election processes."[5] The Court explained that, where the union had at one time enjoyed majority support among the employees, the Board, in fashioning a remedy, can properly consider:

> . . . the extensiveness of an employer's unfair labor practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue . . . .[6]

Initially, we note that beginning June 8, 1979, the day after card solicitation began, and continuing through July 1, 1979, Respondent, as enumerated above, engaged in numerous unfair labor practices which were plainly calculated to have an impact on most, if not all, employees in the unit. We find that this campaign of serious and extensive unfair labor practices had the tendency to undermine the Union's majority strength and impede the election process.[7]

We further find that the possibility of erasing the effects of Respondent's unfair labor practices and of insuring a fair election by the use of traditional remedies is slight. Respondent's discharge of an employee who was a leading union advocate because of his protected activity constitutes unlawful activity long classified as misconduct going "to the very heart of the Act,"[8] and is one of the most flagrant means by which an employer can seek to dissuade employees from selecting a bargaining representative.[9] Furthermore, Respondent's threats of plant closure are among the most effective means for destroying employee support for a union and making a fair election impossible for an extended period.[10] Additionally, Respondent's solicitation of grievances, followed by the remedying of one of the employees' principal grievances through the granting of a substantial increase in insurance benefits, will have a lingering effect, since employees will be reminded of Respondent's action whenever they receive insurance benefits and are likely to communicate to any new employees the manner in which the increased benefits were obtained.[11]

[5] 395 U.S. at 614.

[6] *Id.* at 614–615.

[7] *Chandler Motors, Inc.*, 236 NLRB 1565 (1978); *Teledyne Dental Products Corp.*, 210 NLRB 435 (1974).

[8] See, e.g., *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941).

[9] *Apple Tree Chevrolet, Inc.*, 237 NLRB 867 (1978).

[10] *N.L.R.B.* v. *Gissel Packing Co., Inc., supra*, 395 U.S. at 611, fn. 31; *United Services for the Handicapped*, 251 NLRB 823 (1980).

[11] *Chester Valley, Inc.*, 251 NLRB 1435, 1452 (1980).

Therefore, for all the above reasons, we conclude that the employees' sentiment, once expressed through authorization cards, would, on balance, be better protected by our issuance of a bargaining order than by traditional remedies.

The record shows that by June 7 the Union had obtained 29 valid authorization cards from the 56 employees in the appropriate bargaining unit. Thus, by June 7, the Union represented a majority of employees in the appropriate bargaining unit. As noted above, Respondent embarked on its unlawful course of conduct on June 8. We will therefore order that Respondent bargain with the Union as of June 8, 1979.[12]

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusion of Law 1:

"1. Since June 7, 1979, the Union has represented a majority of the employees in the appropriate bargaining unit described below, and since June 8, 1979, the Union has been the exclusive bargaining representative of said employees within the meaning of Section 9(a) of the Act. The appropriate bargaining unit is:

> All production and maintenance employees, shipping and receiving employees, warehousemen, and truckdrivers employed by the Employer at its Doylestown, Pennsylvania, facility, but excluding all quality control and research and development technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that the Respondent, Penn Color, Inc., Doylestown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or in any other manner discriminating against its employees because of their union or protected concerted activities.

(b) Threatening to relocate its plant because of its employees' union activities.

(c) Interrogating employees as to how many employees had signed union authorization cards.

(d) Threatening to discharge employees in retaliation for their prounion activities.

(e) Promising promotions to employees to induce abandonment of union activities.

(f) Threatening to utilize mistakes in work performance as a pretext to discharge prounion employees.

(g) Attempting to induce employees to sign antiunion petitions.

(h) Promising improvements in benefits and better pay as a reward for employee discontinuance of union activities.

(i) Soliciting employee grievances for the purpose of inducing their abandonment of union activities.

(j) Granting substantial increases in insurance benefits as an inducement for employees to discontinue union activities.

(k) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with Teamsters Union Local No. 115, as the exclusive representative since June 8, 1979, of the employees in the appropriate bargaining unit described below, with regard to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

> All production and maintenance employees, shipping and receiving employees, warehousemen, and truckdrivers employed by the Employer at its Doylestown, Pennsylvania, facility, but excluding all quality control and research and development technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Offer George Moore immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(c) Make whole George Moore for any loss of earnings which he may have suffered by virtue of

---

[12] *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977). Member Fanning would make the bargaining order prospective in the absence of a timely demand and refusal to bargain. See his concurrence in *Beasley Energy, supra.*

The Administrative Law Judge found that Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union on and after June 14, 1979. Respondent excepts on the grounds, *inter alia*, that such a finding is barred by Sec. 10(b) of the Act. In view of our finding that a bargaining order is warranted based on the violations of Sec. 8(a)(1) and (3) found herein, we find it unnecessary to pass on the Administrative Law Judge's finding of a violation of Sec. 8(a)(5) and (1).

the discrimination against him by paying an amount equal to what he would have earned from the date of discharge to the date when he is offered reinstatement. Backpay shall be calculated in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as computed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(d) Expunge from George Moore's personnel files, or other files, any reference to his June 8, 1979, discharge.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Doylestown, Pennsylvania, plant copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by its representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act, as amended, gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT discharge or otherwise discriminate against our employees because they have engaged in concerted union activities.

WE WILL NOT threaten to relocate our plant because of the employees' union activities.

WE WILL NOT interrogate our employees as to how many employees have signed union authorization cards.

WE WILL NOT threaten to discharge employees in retaliation for their prounion activities.

WE WILL NOT promise promotions to employees to induce abandonment of union activities.

WE WILL NOT threaten to utilize mistakes in work performance as a pretext to discharge prounion employees.

WE WILL NOT attempt to induce employees to sign antiunion petitions.

WE WILL NOT promise improvements in benefits and better pay as a reward for employees to discontinue their union activities.

WE WILL NOT solicit employee grievances and thereby promise satisfaction of their demands, in order to induce abandonment of current union activities.

WE WILL NOT grant substantial increases in insurance benefits as a means to restrain and coerce our employees in their protected union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL, upon request, recognize and bargain collectively with Teamsters Local Union No. 115 as the exclusive representative since June 8, 1979, of the employees in the following appropriate unit and, upon request, embody in a signed agreement any understanding reached. The appropriate bargaining unit is:

All production and maintenance employees, shipping and receiving employees, warehousemen, and truckdrivers employed by the Employer at its Doylestown, Pennsylvania, facility, but excluding all quality control and research and development technicians, office

clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL offer George Moore immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make George Moore whole for any loss of earnings he may have suffered as a result of our unlawful discrimination against him, plus interest.

WE WILL expunge from George Moore's personnel files, or other files, any reference to his June 8, 1979, discharge.

PENN COLOR, INC.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held before me in Philadelphia, Pennsylvania, on January 19, 20, and 21, and on February 2, 1981, on complaint of the General Counsel against Penn Color, Inc., herein called the Respondent or the Company. The complaint issued on August 25, 1980, upon a charge filed on July 5, 1979, by Teamsters Union Local No. 115, herein called the Union. The issues presented are: whether the Respondent unlawfully refused to extend recognition to the Union on demand; whether it unlawfully discharged a union leader; and whether it committed a number of other violations of the statute. Briefs were filed by the General Counsel and the Respondent.

Upon the entire record and from my observation of the witnesses, I make the following:[1]

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Penn Color, Inc., a Pennsylvania corporation, is engaged in the production of color concentrates at its Doyleston, Pennsylvania, facility. During the year preceding issuance of the complaint it sold and shipped goods valued in excess of $50,000 from this one location to points outside the State of Pennsylvania. I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that Teamsters Union Local No. 115 is a labor organization within the meaning of Section 2(5) of the Act.

[1] A motion by the General Counsel to correct certain typographical errors in the transcript, unopposed, is hereby granted.

III. THE UNFAIR LABOR PRACTICES

A. *A Picture of the Case*

The Respondent operates in two locations, one in Doyleston, Pennsylvania, and the other in Flemington, 20 or 25 miles away. Among the approximately 56 production and maintenance employees at Doyleston there developed a move towards joining Teamsters Local 115 in June 1979. Within 3 days, by the morning of June 8, 29 of them had signed cards authorizing Local 115 to bargain on their behalf. On June 13 the Union, in writing, formally demanded recognition as exclusive bargaining agent of the Doyleston employees; the Respondent ignored the request. On June 18, 3 days later, on June 18, the Union filed an election petition with the Board in Case 4–RC–13742, calling for an election among that same group of employees.

This case, an unfair labor practice proceeding, arose in consequence of the Employer's reaction to the Union's organizational campaign. On June 8, it summarily discharged one of the principal activists in the solicitation of signatures to union cards. On June 12, for the first time, a newly hired contract personnel specialist started meeting with successive groups of employees in the plant and soliciting grievances from them to learn what dissatisfaction in working conditions had led to their prounion resolve. One of the gripes articulated by the employees was the inadequacy of their health benefits. On June 29, the Company announced a number of substantial increases in medical and hospitalization benefits in the insurance which covered all employees. The complaint calls all of this conduct unfair labor practices, coercive techniques to discourage and permanently kill off the self-organizational activities. It also lists additional acts, called violations of Section 8(a)(1) of the Act—interrogation, threats, promises, etc.

Of greater significance, considering the case as a whole, is the further allegation that by refusing to bargain with the Union on request the Respondent violated Section 8(a)(5). In remedy the General Counsel asks that, in view of the pervasive and outrageous nature of the unfair labor practices committed, the Respondent must be ordered, affirmatively, to bargain with the Union now.

The Respondent denies the commission of any unfair labor practices. It also advances a number of contentions said to call for dismissal of the complaint, some as a matter of law and others as a matter of fact. These arguments will be considered below.

B. *The Scope of the Unit Question*

In 1976, another local of the Teamsters International, Local 384, filed a petition with the Board for an election in this same unit limited to the employees of the Respondent at its Doyleston plant. After a regular hearing the Regional Director issued a decision agreeing with the Respondent's contrary contention that that unit was inappropriate because it excluded the Flemington location employees, finding that only a two-plant unit was appropriate, and therefore dismissing the petition (Case 4–RC–12105). On July 27, 1976, the Board denied an

appeal by Local 384 for reversal of that Regional Director's decision.

The Regional Director held a further hearing on the June 1979 petition of the Charging Party here, Teamsters Local 115, and again, on November 2, 1979, issued a decision finding a unit limited to the Doyleston location inappropriate because it did not include the Flemington employees. This time, on appeal by Local 115, the Board reversed the holding of the Regional Director and on June 6, 1980, issued its decision finding the Doyleston single-location unit appropriate. The Board's then Direction of Election was never processed because of the alleged unfair labor practices committed by the Respondent.

In this proceeding, herein, the Company argues that in June 1979, with a Board decision in its hands holding the Doyleston unit inappropriate, it had a right to refuse the Union's demand that it bargain in that unit, and that therefore the complaint allegation that it violated Section 8(a)(5) by its refusal must be dismissed. The position completely misconceives Board law. It is but another way of saying that because an employer has a right to bring a dispute over the question concerning representation to the Board for resolution, it is free to commit unfair labor practices. The question whether the unit requested is or is not appropriate is completely irrelevant to the question whether the employer has committed unfair labor practices. Of course an employer may withhold recognition pending a Board decision as to the appropriate unit. Indeed, it may withhold recognition with impunity for a number of reasons—unit composition, doubt of a majority, question as to reliability of signed authorization cards, or just plain desire for a secret Board-conducted election. All this, of course, only so long as it does not use the intervening period to destroy the union's established representative status, to so coerce and intimidate the employees that a fair election becomes impossible. Cf. *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). And this is precisely what this complaint alleges.

C. *Majority Status*

In its Decision and Direction of Election issued in June 1980, the Board found the following unit appropriate for collective-bargaining purposes:

> All production and maintenance employees, shipping and receiving employees, warehousemen, and truckdrivers employed by the Employer at its Doyleston, Pennsylvania, facility, but excluding all quality control and research and development technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Accordingly, I find that same unit to be appropriate for purposes of evaluating the complaint in the case at bar.

On June 13, 1979, the Union sent its recognition demand to the Company. The next day, June 14, is an appropriate day to test the Union's majority. The parties stipulated that on that day there were 56 employees at work in the unit. The Union would exclude three of these—Steven Prebish, Weston Ruch, and Jack Shaw.[2] Thirty eight authorization cards were received in evidence, all signed by employees in the 56 number total. Of them all, two are dated June 6, 25 June 7, 4 June 8, 1 June 9, and 1 June 13. The remaining are all dated on various dates between June 13 and September 24. This last group includes Prebish, one of the men in dispute. As to some of these cards in evidence, the employee himself testified he signed it. As to others, the witnesses who solicited the signature testified they personally saw the signer of the card write his name on it. And as to a few others, the testifying employee said he received the signed card out of the employee's hands whom he knew and whose signature was already on the card. Under established Board law these are all good authorization cards. *Murcel Manufacturing Corp.*, 231 NLRB 623 (1977).

Counsel for the Respondent argues the cards were not intended as outright authorization for immediate bargaining, but only indication of an agreement to go to an election. In support of this attack on the cards there is a statement by each of five employees who signed—Muick, Miller, Goydas, Pitkin, and Freudenmerger—that when signing he was told by the solicitor that "there would be an election." Another employee—Serrano—said he was told "if I signed the card we can go to an election . . . we were going to be in a union I mean—election for a union." Another man, Snyder, recalled he was told "that there would be an election . . . that didn't mean nothing, except the election for a vote."

Board law is clear: in America we speak English, and when employees sign a simple and clear statement designating a union as their "chosen representative," they must be taken as meaning the import of that same language. As the Supreme Court has agreed, it is only when the later testimony convincingly proves the employee was told the *only* reason for signing the card, despite what is written on it, is to bring about an election, that the card can be ignored in the majority count. *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963); *N.L.R.B.* v. *Gissel Packing Co., supra.* After the events, and after the commission of coercive unfair labor practices by the employer, testimony about prior thinking as to what the card was for, or even testimony of talk about a possible election one day, will not do to invalidate the card.

I find that by June 14, 1979, 33 employees, without question included in the maximum count total of 56, had signed valid authorization cards in favor of Local 115, and that therefore the Union in fact represented a majority in the appropriate bargaining unit.

D. *A Pervasive Question of Credibility*

In denying the unfair labor practices alleged, the Respondent called a number of witnesses. Four of them addressed themselves to the major acts set out in the complaint. These were Robert Polfus, plant manager, William Hirst and Charles Rybny, supervisor and technical

[2] In view of the adequate number of valid authorization cards placed in evidence, the question as to the proper inclusion or exclusion of these three men is an academic matter that can be ignored.

director, respectively, over the union ringleader who was fired summarily, and Edgar Putnam, the president. With the essential question underlying the unprecedented things the Company did at that critical time being one of motivation, the credibility of these witnesses really goes to the heart of the Respondent's entire defense. If they lied, so that the rational inference of illegal purpose becomes convincing—compare *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466 (9th Cir. 1966)—the Company's fixed determination to see that no union ever comes into this plant appears inescapable.

1. On the evening of June 6, three employees—George Moore, Jim Coons, and Thomas Schock—went to the union hall and obtained a quantity of authorization cards. The next day Moore distributed these cards to a number of employees in the lunchroom on three occasions—during the 9 a.m. break, during lunch at noon, and again at the 2 o'clock break. He left union literature about on the eating tables. There were always a number of other employees there, and there was much talk about the Union. The lunchroom is adjacent to an office where two supervisors sit, with glass partitions between the two rooms. A few employees signed cards there. Moore said he saw Supervisor Wes Ruch sitting in that office then; the supervisors spend 50 percent of their time there. After 3 p.m., after checking out, Moore went to the employee parking lot across the street from the Respondent and for the next hour or so solicited signatures both from employees who checked out at the 3:15 shift and from those who arrived for the start of the next shift at 4:15 p.m. He was assisted in this solicitation by several others in the parking lot—Schock and Brad King among them. Most of the cards received in evidence had been signed by nightfall.

Immediately adjoining the open parking lot—separated only by a broken hedge—is the home of Polfus, the plant manager. Three employees testified—Moore, Schock, and King—that Polfus was cutting his lawn that afternoon on June 7 while the solicitation of cards was going on. Moore said Polfus looked at him, and that he, Moore, waved to the manager. Did Polfus see what was going on? He was evasive in his testimony. He said he usually mows his lawn "around 6:30," because his "normal work hours . . . were . . . until 6:00, 6:30 . . ." and that he only left the plant "around 5 o'clock . . . maybe once or twice a year." In contrast, his prehearing affidavit reads: "I usually work until at least 5:00 p.m." Asked on cross-examination had he mowed his lawn that day, he answered: "I don't recall . . . I might have been. I might have jumped a jet to China."

At 11:30 the next morning Joseph McLaughlin, a leadman, complained to Polfus that a "younger" leadman was being paid more than he; there were only two leadmen in the whole place. Polfus told him it was not true. At 12 o'clock, while a large group of employees were eating in the lunchroom, the manager walked in with a printout of the entire employee complement showing everybody's hourly rate of pay. He then let loose a blast at all of them, with the witnesses' recollections varying very little as to his words. From Moore's testimony: "Mr. Polfus stormed into the lunchroom . . . he just came storming in; he was upset he started cursing . . . he wanted to know who was starting rumors and he knew there was trouble going on and he was going to get to the bottom of it. He said that no bad apples were going spoil it for everybody and that when he found out who they were, they were going to hit the f'n road." By McLaughlin: "He came in the lunchroom and he had a printout with all the wages on it and he says: Do you want to see what you make and what the rest of them make? Look at it . . . He said there's a couple of rotten apples that have spoiled the whole thing." By Schock: ". . . he started telling us about how there was a lot of people in the plant, causing trouble and these guys were, pardon the phrase, they were a 'bunch of f—king jerkoffs,' and that they were rotten apples and "that they were trying to ruin all the good workers in Penn Color' . . . these people, if they were causing trouble, they would go down the road . . . ." By Thomas Bastion: "I heard him say that the positive people are the ones that are going to stay and the weakies are going to be first to go." By Brad King: "He said that, just because of a few rotten apples, they're going to spoil it for us. And that the weakies will go first." The manager's own version: "I said . . . somebody was spreading rumors that Penn Color was, you know, paying—being unfair to their employees and some rotten apple was going to spoil the good morale of the company . . . I laid it on the table and I invited everybody who was present to take a look at the printout . . . ." "I said . . . somebody's spreading rumors that there's unfair pay practices and it's a lie. There's a couple of rotten apples going to spoil, you know, the good attitude and morale of the Company." "Q. Could you have referred to them as troublemakers, also?" "A. It's possible but I don't recall."

Polfus' explanation at the hearing, that the sole provocation for his such offensive and threatening outburst that day was the fact that one man had complained about his rate of pay compared with that of one other man, greatly discredits the witness. How does one man, who speaks a single phrase, become "rotten apples," "weakies," "trouble-makers," who "spoil . . . the good . . . morale of the Company?" How did the plural get into his language at all? There had been an earlier union organizational campaign a few years before which had failed; Polfus certainly knew group action meant union. But single or plural, one man asking for equalized pay could not conceivably justify such behavior by the top management towards all those people in front of him. His artful use of synonyms will not serve to becloud what must have been his real message, especially in the circumstances of the moment.

2. Within an hour of Polfus' tirade, about 1:15 p.m., Rybny, the technical director of the chemical testing department and over the 14 employees who work there, called a meeting of the whole group. He had found certain solvent tanks dirtier than they should have been and wanted to tell his employees to be more attentive to their duties. As Rybny himself put it, he started the meeting by "indicating . . . disappointment" to his employees. Moore, who had heard of the complaint earlier in the day, spoke up and admitted he had been responsible for

the inadequate cleaning job, and offered to clean it up. Upon this single comment by the employee, Rybny discharged Moore on the spot.

Again—credibility. Early that morning—Friday, June 8—Hirst, the immediate supervisor over Moore but under Rybny, talked to Moore about his failure to follow instructions and using the wrong pigment. As the two talked—obviously not in angry terms—Hirst told Moore that and this is from the supervisor's testimony:

> —he had a great future with Penn Color . . . our company was growing, we were getting more locations . . . all he had to do to succeed at Penn Color was just perform properly. That he was in his first year at college, he went to a 2-year college, that he had finished that, he was going to be going back the next year for further education. That with the opening that could be in the Company, that he didn't necessarily have to work in the QC lab, that he could work, stay upstairs in our computer office. Or maybe at some point that he could work in our color computer office or you know, that there were other opportunities, there were other positions in the company which he could come to work at at a future date.

As Moore recalled it, Hirst asked him "what my plans were with the Company." Moore was then a college student and answered he was "happy" working in the assignments he had. Hirst continued, now according to Moore: ". . . that that was the reason they had hired me, was to be prepped for the use of the computer . . . that I would probably have to be sent to school and there was a definite manager's position in it for me—in the near future." Such friendly words from the immediate supervisor—whichever version be accepted—are in complete conflict with the supervisor's earlier story of the employee's long and persistent record of disobedience such as to put him, that very day, on the brink of discharge. Was it also before Polfus came to work and informed management of what he had seen on the parking lot while cutting the lawn?

In the face of this testimony, the Respondent offered evidence purportedly proving Moore had a very bad record of offenses and disregard of orders, and that the June 8 dirty solvent tank incident was simply what broke the camel's back and dictated the discharge. The management witnesses said they never heard of the union activity until Friday afternoon, after Moore was dismissed, and that Monday morning, at 9 o'clock, they had the labor lawyer, Laddon, in the company office, preparing the defense to this case.

As witnesses now, both Hirst and Rybny listed, in very precise detail as to both dates and events, no less than eight offenses by Moore before June 8. Their testimony is mutually corroborative in extraordinary precision. Asked to explain his incredible memory, Rybny said: "Upon George Moore's termination, the week after his termination, because of the circumstances involved, we did go back into the files and compile these dates as a matter of record." The General Counsel then placed into evidence a typewritten one-page document bearing the date of June 19, 1979; it lists nine dated offenses by Moore starting February 2, 1979, and ending with the June 8 solvent tank incident. Asked to explain the exhibit, Rybny answered: "This particular document was compiled at the request of Mr. Laddon after speaking to him the week after Mr. Moore's dismissal. He indicated we should have all these things documented." "Q. Did he tell you why to make it? The Witness: He indicated to me that we should have events documented and I did this also for this reason."

The oral testimony of both Hirst and Rybny followed exactly, item by item, the details set out in the document so prepared after the discharge. It was given in response to continuously leading questions by company counsel on direct examination. There can be no question but that he was reading from the document as he lead the witnesses on.

No meaningful purpose would be served by repeating here the unending details of the two supervisors' recitals. Moore recalled one criticism, on March 22. Other than that, his testimony is he was never threatened with possible discharge for incompetence or continuing errors. As stated, the question to be decided is one of motivation in the discharge decision, and not exactly what happened in each of a number of days in the past, or exactly how dirty was this or that of the many tanks used regularly for cleaning tools and chemical containers. Repetitive testimony about precisely how the department operation went on only beclouds the real issue of this case.

That both these supervisors gave a fabricated story of Moore's past work performance is the clearest thing on this record. As will appear, there are many reasons for this conclusion. But the most direct of all—akin to what has been called the death wound in any witness' story—is the statement by Rybny at the hearing that the list of offenses—prepared after the discharge to "document" the anticipated defense one day to come—was based on the company "files," because management had to "compile these dates as a matter of record." There were no company files pertaining to Moore! The Respondent does have an established system of recording, in writing, delinquencies and warnings issued to its employees; they are maintained in the employees' personnel files. A number were produced as to other employees. In fact one was even produced by the Company concerning Moore. It is dated March 22. Moore recalled an incident on or about that date, when he was in fact criticized. He was not shown that entry, but that does not matter. What is important, and effectively destroys the supervisor's testimony, is that had there been any records, or files, involving Moore they would have been brought to the hearing. For the supervisor to say that the list now in evidence reflects original contemporaneous files, is but another way of offering self-serving documents, prepared after the events, in substitution for records that were never made. Company counsel did not himself attempt to place that list into evidence, but the effect of the supervisor's testimony is the same. The list was being read into the record via the leading questions to each supervisor. The attempted deception is so clear as to justify no further comment.

There is more. According to Hirst, as early as March 5 Rybny threatened all the employees that any future failure to keep the solvent tanks adequately clean would bring on not only warnings but outright discharge. He continued that the very next day Moore committed the same sin again. He went on: on March 19 Moore left things in the wrong place—"nothing had been put away." "He hadn't followed procedures." Again on March 21 the same thing and again nothing more than an oral criticism of Moore, if the supervisor is to be believed at all. What this means—even were I to believe his story of repeated warnings, which I do not—is that Moore's performance, even after the March 5 reprimand, was not so bad as to merit any kind of punishment. That is, until the morning of June 8, after his very open and continuing solicitation of union cards. Moore testified that when Rybny fired him in instantaneous reaction to what he said on June 8, Hirst voiced disagreement, saying he would quit if Moore were really let go. While Hirst denied having said that, he did admit, as set out above, that earlier that very morning, even after telling Moore he had made still another mistake, he talked of the bright future Moore had with the Company. Would a supervisor who thought so ill of one of his men—as Hirst belabored at the hearing—have spoken so friendly to him just hours before his discharge? And if there remains any doubt about the falsity of the testimony of both the supervisors, it is completely dispelled by the fact that Moore was given a raise only a week before June 8.

3. We come to the company president. Starting on June 12, 5 days after the large percentage of employees had signed union cards, Putnam had an outsider named Larry Cozzens circulate about the plant speaking with the employees in groups to solicit their grievances. Nothing like this had ever happened before. Again, no need for details. Six employees testified of how Cozzens asked to discuss their "problems," their "grievances," their "gripes," said he would be the "go between," to management, write up their demands and pass them on to the president to consider. In Cozzens' words, he asked the employees for "their opinions on what was good and bad." ". . . I would go out and, like I said . . . if they had a problem, they would generally pipe up and bring it to my attention." Among the things the employees complained about were their personal problems with Manager Polfus, and the insufficiency of the health insurance benefits then in effect. On July 1, the Company made substantial changes in the insurance benefits for all employees as follows:

> . . . Increasing the maximum amount of major medical expenses covered from one hundred thousand dollars to one million dollars. Number 2. Increasing the amount reimbursed for in-hospital visits by doctors from $5 per visit to $10 per visit. Number 3. Increasing the amount reimbursed for laboratory and X-ray work $100 to $200. Number 4. Increasing the surgical RSV from $5 to $10. Number 5. Adding a prescription drug program providing for reimbursement of 100 percent of expenses with a $1 deductible per prescription. Number 6. Adding a short-term disability income replacement plan providing for the receipt of 50 percent of weekly earnings up to a maximum of $200 per week for a maximum of 26 weeks.

If ever a coherently related series of events and acts proved the commission of unfair labor practices, this is it. Immediately upon learning of his employees' union activities, Putnam brings in a stranger to find out what it was that caused them to do that. The man is told, as he admitted, to bring back to management exactly what the employees' demands are. He does that, and the president then gives the employees one of the main improvements in their conditions of employment to satisfy a gripe reported.

To offset the inescapable inference that both the solicitation of grievances and the granting of increased health benefits were strictly a reaction by management to put an end to the union movement, Putnam testified that all this had been decided before any union activities occurred at all. He said he had been in touch with the Carroll Company—which furnishes the services of people like Cozzens on a per diem basis—as far back as 1977, when the Company had first offered its services. He went on that throughout 1978 and early 1979 the Carroll Company had kept calling him, sent him a brochure explaining "the advantages that they would keep unions out." Putnam then said he decided on May 15 to use that company's man to talk to the employees every Tuesday. June 12 was a Tuesday. Cozzens said that on an earlier assignment of his from the Carroll Company he had gone to an employer that "went into a union campaign." While Cozzens did not himself directly raise the question of the Union while speaking to the employees here, he did say they raised the subject and that he then "gave them the benefit of my experience." Cozzens also testified he first arrived at the Respondent's place of business on June 7, when he met only with the supervisors. Very damaging to Putnam's testimony is Cozzens' further testimony that on June 7 there was no talk about his meeting with employees, that he was told to do that only on June 12.

> Q. . . . What day of the week was it that you met with the employees?
>
> A. Tuesday.
>
> Q. The 12th?
>
> A. Yes.
>
> Q. When you came back there that day, were you informed that a union campaign was in progress?
>
> A. No.
>
> Q. The Union campaign was not mentioned to you?
>
> A. No.[3] Ed Putnam asked me to talk to all of the employees . . . .

[3] President Putnam, testifying after Cozzens, gave a straight lie to his own man:

> Q. Now, I'd like to turn your attention to Tuesday, the 12th of June. When did you first see Mr. Cozzens on that day?
>
> A. . . . In the morning some time, early in the morning.

Continued

Q. Had you already been scheduled to talk to all of the employees that day?

A. No, I hadn't been.

Q. So, the first time that you were told that you were going to talk to all employees on that day, was when you arrived at the plant that day?

A. That's correct.

Cozzens was called as a witness by the Respondent. What more direct proof could there be that Putnam hit on the idea of soliciting grievances only after the union organizational campaign started?

His attempted explanation of the grant of increased health benefits suffers from like weaknesses. According to him, changes in the Company's group insurance policy was an old story, the Company having desired for many months, as far back as January 1979, to improve the coverage. He pointed to a change in maternity benefits announced on April 29 as supporting proof of the defense. It then developed that that change had been mandated by changes in Federal law. The Respondent placed into evidence two letters dated during May received from different brokers offering certain forms of health increases at certain prices. During June, after the union movement had surfaced, the Company dealt instead with its own broker, and made a deal with him to accept his offer instead. The changes it announced on July 1 were modifications made in the Company's long-existing group policy with that broker. The expiration date of the policy was June 1. If in fact the Company was interested in comparing what other companies had to offer with what its own broker suggested, why did it have to wait until after its policy expired? The normal time for changing insurance terms is when the existing policy expires. Except, of course, when special circumstances arise that precipitate quick action for other reasons. I am not at all sure that the two letters on a broker's stationery dated in May 1979 were in truth written at that time. But given the sequence of events—union activity followed by management investigation as to its causes, Cozzens' report to Putnam that increased benefits of this kind were exactly one of the employees' major grievances, and then the surprise changes in the Company's already renewed policy—Putnam's antiunion motivation is absolutely clear. He was not telling the truth at the hearing.

A final tidbit about Putnam's credibility. A former employee named Robert Chambers—testifying for the General Counsel—spoke of coercive antiunion statements made by certain supervisors during June 1979, called violations of Section 8(a)(1) of the Act in the complaint. In very extended cross-examination it was then brought out that the witness was questioned by company representatives on December 6, 1979, and signed a statement, in the presence of and witnessed by Kevin Putnam, the president's son and then plant manager, having replaced Polfus, and by June Parenteau, the personnel director; that written statement was partially consistent with his direct testimony at the hearing. He signed another statement, also received in evidence, on January 31, 1980; it is a more comprehensive one and was also witnessed by Kevin Putnam and Parenteau. This one gives the lie, in chapter and verse, to every item in the statement he had signed the month before and to his later testimony against the Company. All the unfair labor practices he talked about at the hearing as having happened, never happened at all, according to that statement. Chambers' testimony continued that he volunteered to give this statement to the Company because he was fearful of losing his job, what with the threats he had heard and the pending unfair labor practice proceeding, where he might have to testify. At the hearing, of course, he insisted all these statements made in January 1980 were outright lies.

On October 24, 1980, Chambers was discharged for having falsified his timecard. He said it had been a mistake, and offered to return the money, but the Company would have none of that. Chambers knew he would collect no unemployment insurance benefits after such conduct, and therefore, as he continued to testify, he went to the Company to make an offer: If they would "falsify the reasons" for his discharge, and not say he was justly fired, in return he would give testimony at this hearing favorable to the Respondent. He made the proposal to Kevin Putnam, who told him to come to see his father. When Chambers did that, there was talking between him and the president. Just what went on between the two that day is not possible to state with precision. Chambers vacillated, changed his versions of this or that, so that he cannot be believed no matter how his story be viewed. But two facts are clear, because Putnam himself clearly admitted them. (1) Chambers made the offer to the president to be a pro-company witness at the hearing then scheduled to take place 2 months later. (2) Putnam offered to give him $100 a week in cash for the next 4 weeks, which he did do. Chambers found work soon and never applied for unemployment benefits. And, as already stated, contrary to his January 1980 signed statement, then gave testimony favorable to the General Counsel.

Insofar as his testimony on direct examination in this proceeding on the subject of coercive threats is concerned, I do not believe a word out of Chambers' mouth. His total testimony establishes only one thing, and it is that he is an absolute liar. But as the story ended, it also persuasively proved once again that Putnam cannot be believed either. He fired Chambers for being a thief, and even refused the man's offer to return the money, despite the man's plea that he needed the job badly. Would a rational man, in such a frame of mind, then make a $400 gift—out of pity, as Putnam said—to that same thief? When offering the money Putnam told Chambers it was not "connected with the Company whatsoever," and even had the man add his signature to a self-serving document the president made and signed—to himself!—saying the $400 was given in the name of charity only. I do not know what went on between these two people that day, but that Putnam's explanation—later both in

---

Q. Okay. And what was your discussion with him?

A. I told him that we had belief that there was a union organizational attempt and reviewed with him what [he] could and couldn't do, and they couldn't promise anyone anything and not to interrogate or threaten or whatever and he indicated to me that he understood all that. I believe he even talked to—Mr. Laddon was there that day.

oral testimony and in written self-serving contemporaneous writing—discredits him in this case, is a fact of life.

E. *Violations of Section 8(a)(1)*

With all the foregoing being the realities as to the credibility of the Respondent's principal witnesses, and considering the totality of the record as well as the demeanor of all the witnesses, I credit the following testimony by a number of employees against the denials, in certain instances, by the supervisors they quoted.

John Smith testified that during the afternoon on June 8, after Moore had been discharged during the lunch period, Manager Polfus:

> . . . told me there was a lot of trouble going on in the plant, a lot of guys causing trouble and that last time we had trouble, it was really bad, and that if the union tries to get in, he would relocate or sell down south . . . . He asked me how many guys have been signing cards, about 15, and I said no, we have more than the majority of the plant . . . he said I was a good worker and I had a future at the plant.

I find that by Polfus' statement that if the union movement prevailed the Company would relocate the plant somewhere else, and by his interrogation as to how many employees had signed union cards, the Respondent violated Section 8(a)(1) of the Act. *Seal Trucking Limited*, 237 NLRB 1091 (1978).

Brad King testified that early in the morning of June 8, Polfus called him aside for a personal talk:

> He said that we had messed up on your backpay. You're due for a raise and you didn't get it . . . he said that, he's going to give me my backpay at times and a half . . . . Then he said . . . he had heard rumors going around the plant about a Union. He said that, the rubber workers had tried to get a "union" in that Car-Tex and they failed. He said that, the vote was a 120 to 30. And he said, Brad just think, think about those 30. That would leave a bad taste in the company's mouth. And when it comes time for yearly raises, the company will say f— them. Then, he said, do I know who the trouble makers were, and I had told him no. And he says, that the guys had taken a petition up the last time for a union and he got rid of them. He said that, if I find out who the trouble makers are, I'm going to get rid of them. He said that, for me to hang around with the bosses and the supervisors and the people who have good influence in the company and don't hang around with the bad influence. . . . He said . . . that I'll probably be in line for a supervisor's job if I keep up the good work.

Polfus talked to this employee again the following Monday, still according to King:

> . . . he said, that this f—ing union means my job and if you're going to f— me, I'm going to f— you. And then he said, I want underneath the BP scraped, the BP cleaned out. I want the BP loaded and dumped, I want all the drums that's in here outside. I want the three roll mill cleaned . . . I want this job perfect. If it's not done perfect, you're not doing your job . . . I'm tired of you guys f—ing over me, the last time a guy got a union in, I got rid of them. . . . And that he don't have to fire me for the Union, he can fire me for not doing my job. And then he said, how is your buddy, George Moore doing, I heard that he got fired for not cleaning the tank.

Polfus denied having mentioned the Union or union activities to any of the employees, or having voiced threats in any manner. He said he first learned about the Union's presence on Friday afternoon, after one of the leaders had been fired. I do not credit his denials. The only coherent explanation of his continuing diatribe in mid-day on June 8—about "troublemakers," "weakies," "rotten-apples"—has to be that he knew what went on near his home the day before. He was talking about unioneers when using those words. The unending cross-examination of the three or four employees who did all the soliciting of union cards in the parking lot, aimed at proving none of them were there at all, was meaningless. They did not recall it having been raining. A Department of Commerce report showing there was light rain in Philadelphia—30 miles away from this plant—does not prove the contrary. The witnesses did not recall just how many feet away they were from this employee or that when obtaining this or that signature. They were vague as to whether it was 3, 4, or 2 minutes before or after 4 o'clock or 4:30 when one or another employee signed. A year and a half after the events, irrelevant details such as these mean nothing.

When Polfus told the assembled employees on June 8 that the bad apples, or weakies, however he variously phrased it, were troublemakers and were going to "hit the road," or "go down the road," or "be first to go," he was talking about the prounion employees, and he was threatening to discharge them because they were trying to bring the Union into the plant. I find his conduct then was a very direct violation of Section 8(a)(1). I also find that: (1) by his statement to Smith that the Company would relocate before having to deal with a union; (2) by his questioning of employees as to how many had signed union cards; (3) by his statement to King that he would get rid of employees who favored the Union; (4) by his implicit promise of promotion to King if he refrained from continuing the union activity; (5) by his statement to King that management would utilize any mistakes in work a man might commit as a pretext to fire the unioneers; and (6) by his simultaneous indication to King that in fact Moore had been discharged exactly via that technique, the Respondent violated Section 8(a)(1) in every instance.

King also testified that during the week of June 11, on Wednesday or Thursday, Supervisor Horst talked to him: "Dave Horst said that Steve Prebish had a petition and that all he needed was four or five people to sign the petition and they could go send it to the Teamsters and they won't be able to represent the Company." This was in keeping with the plant manager's earlier advice and invitation to other employees; I do not accept Horst's de-

nials. I find that by Supervisor Horst's statement to the employee that the Company desired the signature of his and other employees to an antiunion petition, the Respondent violated Section 8(a)(1) of the Act.

Thomas Schock testified that about a week after the card signing started, Supervisor Steve Prebish asked him ". . . would you like to sign a petition to get the union card?" When Schock asked whether the card signers might not then be fired, Prebish continued: ". . . no, that's not the way it's going to work. We'll get everybody to sign the petition and we'll get Mr. Putnam to sign a thing that says you won't be fired and it will work out for all of us, all of the trouble will be over with, and plus we'll get better benefits and better pay and everything." I find that by Prebish's request that the employee sign an antiunion petition, and by his statement that when the "trouble"—a synonym for "union"—was ended and that the employees would be rewarded with improved benefits and better pay, the Respondent violated Section 8(a)(1). *Big John Super Stores, Inc.*, 232 NLRB 134 (1977).

I find that by soliciting the employees' grievances through Cozzens, beginning on June 12 and continuing a number of Tuesdays thereafter, the Respondent violated Section 8(a)(1). As the Board has said: ". . . there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary." *Reliance Electric Company, Madison Plant Mechanical Drives Division*, 191 NLRB 44, 46 (1971); *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975). This finding is further supported by the testimony of employee Schock, which I credit. Plant Manager Polfus told him during the first day of such grievance solicitation by Cozzens:

> . . . they had brought in a new person, Larry Cozzens into the plant and that he was, you know, brought specifically there to bridge the gap between the labor and the employees, that they had realized that they hadn't had time to do this before, but now that all this trouble had erupted, that they were going to try to bridge the gap between the relations between the workers and the Company . . . . He also said that . . . he had dealt with unions before . . . . People that try to bring unions into the company . . . . He said that he had beaten these people all the time they had gotten into a plant.

I also find that by the surprise, to the employees, grant of substantial increases in health insurance benefits on July 1, 1979, the Respondent violated Section 8(a)(1). *Litton Dental Products, Division of Litton Industrial Products Inc.*, 221 NLRB 700 (1975); *Pedro's Inc., Pedro's Restaurant*, 246 NLRB 567 (1979). Even assuming the Company had given some thought before June 7—the day of the union activity—to the idea of changing its insurance policy, it remains a fact that the decision to do so came after knowledge of the union campaign and after the expressions of resentment about it all voiced by its supervisors. Cf. *Arrow Elastic Corporation*, 230 NLRB 110 (1977). It will be recalled that this business of better health benefits was one of the major gripes which the grievance solicitor Cozzens had drawn from the employees shortly before the advantages were announced. Two other demands by the employees were mentioned in the record—pension and personal problems with the plant manager. Polfus, that manager, was transferred out of this plant, and sent to Chicago, on July 9.

I find that the Respondent discharged Moore in retaliation for his union activities and thereby violated Section 8(a)(3) of the Act. Its knowledge of his union activities is clear in the light of the plant manager's outburst in the lunchroom after seeing the solicitation outside his house the night before. And the manager's threat, only an hour before Moore's discharge, ties right in with the dismissal. Moore had successfully solicited 14 of the cards already signed.[4]

Moore made mistakes, as he admitted. But others made the same mistakes, as both laboratory supervisors also admitted. It was for this very reason—that all the employees neglected the cleaning chores—that a schedule had to be posted rotating the cleaning duties among the entire complement. I do not believe the two supervisors' extended story about Moore's special incompetence. As already stated, it was a fabricated story.

When Moore volunteered it was he who had left the tanks dirty, Rybny's reaction, according to Moore, was "how do you like working here," and when the employee answered he enjoyed it, the supervisor said, "You don't act like it . . . you're dismissed." Rybny's version is that he told Moore "he didn't really like his employment . . . and that he would be dismissed from laboratory activities." He then added he also said "he could perhaps be employable somewhere else in the corporation." Angry as he said he was over the "unusable" and "contaminated" condition of the laboratory, the last thing Rybny would do at such a moment was offer the man another job with the same company. Indeed he could not bring himself to admit outright at the hearing that he had really fired the man. But the fact is Moore was discharged that day. Rybny had never before fired anyone in the course of his employment here, despite his protracted story of one employee after another failing to keep the tanks clean. And when Moore came back a few days later hoping to get some kind of work because he needed it, the manager refused him; among his stated reasons was a company policy against rehiring a dischargee.

All three of the management witnesses were giving false testimony. As the Court stated in *Shattuck Denn Mining, supra* at 470:

> If he [the trial examiner] finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where . . . the surrounding facts tend to reinforce that inference.

[4] Compare: *Galar Industries, Incorporated*, 235 NLRB 28 (1978).

This is exactly such a case. Considering the record in its entirety there can be no question but that the Respondent would never have dismissed Moore so summarily merely because of the not unusual condition of the solvent tanks that morning. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

I find that by its refusal to bargain with the Union on June 14, 1979, and thereafter the Respondent violated Section 8(a)(5) of the Act. When Edward Gray, the Union's lawyer, visited President Putnam on June 13 and handed him a written bargaining demand on behalf of "your production and maintenance employees," he intended the Doyleston plant employees only, not including the Flemington location employees of the Company. There can be no question but that Putnam well knew that. In fact all he told the union agent, after refusing to look at the authorized cards offered for his inspection, was that he was expecting the demand and that his lawyer would decide. With the unfair labor practices that were being committed during that very period, the conclusion of unlawful refusal to bargain is compelled.

Thomas Schock

The unfair labor practices detailed above were of substance, significant restraint and coercion upon the employees' prounion resolve. Things like permanent substantial increases in benefits, discharge of a union ringleader, threats of further retaliation, and inducement of the employees to put their names to antiunion petitions go to the heart of the protection which this statute assures working people. They are of the kind which the Supreme Court, in its *Gissel* decision, referred to as outrageous or pervasive.

Some times there will be listed in the General Counsel's complaint further minutiae, which are questionable and meaningless incidents at best. One such, in this case, involves an employee named Thomas Schock, who voluntarily quit the Company on July 26, 1979, the day after transferring, at his own request, it would appear, from Doyleston to Flemington. He had already received a job offer elsewhere when this happened.

The complaint says the Company transferred this man from one location to another because of his union activities, and thereby violated Section 8(a)(3). The facts—and they are largely revealed by Schock's own testimony—simply do not support the basic assertion of involuntary transfer. On Friday, July 20, 1979, Schock was told to paint the walls of one of the rooms in the plant. At break time, with his brush still wet, he painted the number 115 (the identifying number of the Union Local of the moment) on the wall still to be painted. Charles Wendig, his supervisor, did not like that and asked Kevin Putnam, then plant manager: "Can't he be fired for destroying company property?" Putnam was not "upset" and just told Schock to paint over those numbers. Wendig repeated he thought the man ought to be fired. That evening Schock took off for a weekend at the seashore; he did not return to work until the following Wednesday morning. He admitted at the hearing that his failure to call in and report his absence either Monday or Tuesday was a direct violation of plant rules. When called to the office to explain his dereliction, and after Putnam told him "we have enough to fire you right now," Schock said: "I guess it will be better if you just fired me." But Putnam responded, still according to Schock: "We don't want to fire you right now." Again Wendig spoke of the employee's prior poor performance and repeated he deserved to be fired in part because of the wall painting incident. But Putnam held firm to the position that he did not intend to discharge the man.

At this point, there is a conflict in testimony between Schock and Kevin Putnam. Schock said he was later called to the office again. Now Schock quoted President Putnam as saying that while they were not going to fire him "they felt it would be to my benefit if I went to Flemington." Schock did that but quit the next day. As Kevin Putnam recalled it, it was Schock who "asked me about transferring into production." Putnam continued that later both he and his father talked to Schock, when the employee "said . . . his performance, he knew, was low, was below standard. He also admitted to having a poor attitude and, again, he thought that a change in job position would help. My father at that time mentioned that there was maintenance work to be done up in Flemington, and asked him if he had any interests in that. He said that he did have interest and he would like to make that transfer." The president's version of this talk is consistent with that of his son.

I find that it was Schock himself who first suggested some kind of change in his job. On cross-examination he admitted telling Kevin Putnam he had a negative attitude towards the Company. This after relating how he had 3 months earlier been suspended in disciplinary action because of another offense at work. Schock also admitted that he "suggested that a change in job position might help your [my] attitude," and that he "should move to production." He ended with the manager saying the only available job was maintenance at Flemington, and, "I said, okay, I'll go over, I'll try it."

When Supervisor Wendig asked the manager, in the employee's presence, why he could not be fired for defacing company property, he was expressing an antiunion attitude and obliquely threatening Schock with reprisal for that reason. The idea that Schock was defacing company property was pure fantasy in the circumstances. It was at best still another instance of a supervisor in this plant, during that critical period, intimidating the employees to coerce them into abandoning their prounion resolve. But it does not mean the direct testimony can therefore be ignored. In the light of Schock's total testimony, clearly it was he who asked for a change in assignment and who voluntarily accepted the only opening the Company had to offer. To say the Company transferred him is a meaningless play on words. I make no finding of illegality with respect to Schock's change of job or departure from the Company.

The Remedy

The Respondent must, of course, be ordered to cease and desist from again committing the unfair labor practices of which it has been found responsible. Affirmatively, it must be ordered to bargain with the Union in good faith on request now. It must also be ordered to offer

Moore reinstatement to his old position with full backpay, and to post the appropriate notices. In the circumstances of the total case, the restraining order must be that the Respondent not hereafter violate the statute in any other manner whatever.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By refusing to recognize the Union, on demand, as the exclusive bargaining agent of employees in the appropriate bargaining unit, the Respondent has violated and is violating Section 8(a)(5) of the Act. The appropriate bargaining unit is:

> All production and maintenance employees, shipping and receiving employees, warehousemen, and truck-drivers employed by the Employer at its Doyleston, Pennsylvania, facility, but excluding all quality control and research and development technicians, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. By discharging George Moore for engaging in protected union activity, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By the foregoing conduct, and by (1) threatening to relocate its plant because of the employees' union activities; (2) interrogating employees as to how many employees had signed union authorization cards; (3) threatening to discharge employees in retaliation for their prounion activities; (4) promising promotion to employees to induce abandonment of union activities; (5) threatening to utilize mistakes in work performance as a pretext to discharge prounion employees; (6) attempting to induce employees to sign antiunion petitions; (7) promising improvements in benefits and better pay as a reward for discontinuance of union activities; (8) soliciting employee grievances to induce abandonment of prounion activities; and (9) granting substantial increases in insurance benefits to restrain and coerce its employees in their prounion activities, the Respondent has violated and is violating Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]